

REMARKS/ARGUMENTS

Claims 12-25 are pending in the application, with claims 14-16 and 19 withdrawn from consideration. Claims 13 and 22-25 have been amended and new claim 26 has been added. No new matter is introduced by way of this amendment.

Applicants have not dedicated or abandoned any unclaimed subject matter. Nor have Applicants acquiesced to any rejections or objections made by the Patent Office. Applicants reserve the right to pursue prosecution of any presently excluded claim embodiments in future continuation and/or divisional applications.

Claims Rejections Under 35 USC §112, second paragraph

Claims 12, 13, 17, 18 and 20-25 stand rejected as allegedly indefinite under 35 USC §112, ¶2.

Claims 13 and 22-24 were rejected for recitation of “the characteristic waveform”. Those claims have been amended to substitute “output waveform” for “characteristic waveform”, which substitution is believed to moot the rejection. Reconsideration is respectfully requested.

Claim 25 also stands rejected as allegedly indefinite in its recitation of input and output waveforms in relation to ETMs and that relationship and visualization, as well as for what is meant by “peak recognition”. Applicants have likewise amended this claim to clarify these points. Once again the amendment is believed to moot the rejection.

As explained in the specification (see published US 2004-0146909 A1), ETMs are directly or indirectly connected to the target analyte [0024], come in different types, and can transfer or accept electrons when stimulated to do so by input of energy. See [0066], and [0187]-

[0193]. Different ETMs have different potentials, meaning they are differentially responsive to different amounts of applied energy (different waveforms). These differential responses can in turn be measured/characterized by differential output waveforms of energy. Filters and/or curve-fitting algorithms can be employed to do this. See, e.g., ¶¶ [066], [187]-[192], [379]-[382], [388]-[399], [402], [403], [427], [428], [439], [448], [458], [465]-[468], [477], and [557].

As seen in Figures 4, 6, and 7, the waveforms can be measured/characterized in different ways, *id.*, e.g., by frequency versus voltage or current versus voltage. Each of these waveforms is characterized by one or more amplitude maximums, spikes or “peaks”. As such, in view of these amendments, Applicants request the Examiner to withdraw the rejection.

Double Patenting Rejections

The claims have also been rejected on alleged nonstatutory double-patenting grounds. While Applicants disagree with this characterization (the issued patent is directed to higher harmonics analysis techniques and the instant application claims are addressed to peak evaluation), Applicants nonetheless are happy to supply a terminal disclaimer upon notice of otherwise allowable subject matter (should the Examiner still hold that position).

Application No.: 10/714,489
Filed: November 14, 2003

CONCLUSION

In view of the foregoing amendments and arguments, Applicants believe all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned attorney, David Foster, at 415-442-1216.

Respectfully submitted,

/David C. Foster/
David C. Foster, Reg. No. 44,685 for
Robin M. Silva, Reg. No. 38,304

Customer No. 67374

July 14, 2009

MORGAN, LEWIS & BOCKIUS, LLP
One Market, Spear Street Tower
San Francisco, California 94105
Telephone: 415.442.1216
Facsimile: 415.442.1001
e-mail: david.foster@morganlewis.com